

CONSTRUCTION CONTRACTS

11. **Mutual Termination for Convenience of CC-1229-04/TLR – Turn Lane Improvements to Markham Woods Road with Prime Construction Group, Inc. of Orlando, FL, (\$1,633,334.00).**

PRIME CONSTRUCTION GROUP, INC. CGC037504 CUC056650 QB33325

1000 Jetstream Drive, Orlando, FL 32824
P.O. Box 590507, Orlando, FL 32859-0507 (Mailing Address)

407-856-8180 PH
407-856-8182 FX

March 30, 2005

Mr. Ray Hooper, CPCM
Purchasing and Contracts Manager
Seminole County, Department of Fiscal Services
Purchasing and Contracts Division
1101 East First Street
Room 3208
Sanford, Florida 32771-1468

**RE: Contract/Project No. CC-1229-04/TLR; MARKHAM WOODS
ROAD WIDENING TO 3 LANES (SPRINGS LANDING BLVD. TO
E.E. WILLIAMSON RD.)**

Dear Mr. Hooper:

Please accept this as Prime Construction Group, Inc.'s ("Contractor") appeal of the Seminole County Purchasing and Contracts Manager's March 16, 2005 decision denying Contractor's contract claim for escalation costs associated with and resulting from delay of the above-referenced project/contract. Though we have researched the issue, we are unable to identify any required/prescribed form for an appeal under Administrative Code Section 330.71. In support of this appeal, we offer the following.

I. Factual/Procedural Background

Bid opening for the project was April 7, 2004, nearly a full year ago. Recommendation of award to Contractor was posted April 21, 2004. Letter notice of contract award was issued and delivered to Contractor on approximately May 12, 2004.

County officials executed the Agreement on June 4, 2004, specifying that date as the effective date thereof.

Comment [BLC1]: Agreement at pp. 1, 16.

From August 9, 2004 through August 15, 2004, Hurricane Charley threatened, then struck, the Florida peninsula, including the geographic area of the project.

From August 25, 2004 through September 7, 2004, Hurricane Frances threatened, then struck, the Florida peninsula, including the geographic area of the project.

From September 2, 2004 through September 24, 2004, Hurricane Ivan threatened the Florida peninsula twice, striking it once.

From September 13, 2004 through September 27, 2004, Hurricane Jeanne threatened, then struck, the Florida peninsula, including the geographic area of the project.

On November 22, 2004, a utility coordination meeting was held, attended by County, Contractor, and representatives of the various utilities affected by the project. At that meeting, "the utility companies indicated that additional time would be required to complete the relocation work due to delays associated with the hurricanes."

Comment [BLC2]: March 3, 2005 letter from T. Carmichael of HNTB to J. Leider of PCG, at p. 3.

On January 4, 2005, Contractor delivered to County a request for equitable adjustment of the contract price ("Contractor's claim") on the grounds that certain material, consumable, and subcontract prices had risen in the months following execution of the Agreement.¹

On January 19, 2005, Contractor met at its office with HNTB Consulting Engineers, Inc. ("the CEI") to discuss the basis of Contractor's claim. Shortly afterward, on February 4, 2005, furnished to County a price escalation summary in support of Contractor's claim, in the amount of \$96,222.00.

Comment [BLC3]: See §2 of the Agreement: "'CEI' is the Seminole County Engineer or the COUNTY'S contracted Consultant for construction, engineering and inspection ('CEI') services. As named in the Contract Documents, 'CEI' shall mean HNTB Consulting Engineers, 1615 Edgewater Drive, Suite 200, Orlando, Florida [32809]."

On February 7, 2005, Contractor furnished to County a revised price escalation summary, in the amount of \$97,903.00, with the instruction that the original summary be disregarded.

On February 28, 2005, Contractor furnished to County a second revised price escalation summary, in the same amount (\$97,903.00), but providing additional detail.

On March 4, 2005, the CEI issued a "Final Decision" recommending rejection of Contractor's claim on various grounds, and stating that the County concurred with that recommendation.

On March 11, 2005, Contractor timely delivered its Notice of Contract Claim to County.

On March 16, 2005, Mr. Ray Hooper, as County Purchasing and Contracts Manager, issued his written decision again denying Contractor's claim, on various grounds.

Two days later, on March 18, 2005, the parties agreed to meet on March 23, 2005 to discuss Contractor's claim, and to toll Contractor's appeal rights until five business days after that meeting, viz., March 30, 2005. This appeal is therefore timely.

¹ As a matter of well-known industry custom, subcontractor and vendor quotes are not good indefinitely; rather, they often expire or otherwise become invalid within 30 to 60 days after transmittal.

Notice to Proceed has not yet been issued by the County.

II. BASIS OF CLAIM

A. Delayed/Withheld Notice To Proceed

To be sure, the contract documents contain myriad provisions addressing the parties' respective rights and obligations *after* the Notice to Proceed has been issued and the work has commenced. However, the contract documents are comparatively silent regarding the parties' rights and obligations *before* issuance of the Notice to Proceed and commencement of the work. For instance, the contract documents provide that:

- The Notice to Proceed is defined as the written notice to Contractor (1) authorizing it to proceed with the Work and (2) establishing the Date of Commencement of the Contract Time.²
- The Contractor must begin work on the Date of Commencement set forth in the Notice to Proceed, and *may not* do any work at the site before that date.³
- The Notice to Proceed is to be issued by County.²
- The date for issuance of the Notice to Proceed is to be established at the preconstruction conference.⁴

The contract documents do not *expressly* provide a minimum or maximum date by which the Notice to Proceed must issue, nor by which the preconstruction conference must take place. Logically, however, the County could not equitably delay or withhold issuance of the Notice to Proceed indefinitely, nor for an unreasonable length of time (e.g., 30 days, etc.) without consequence. In the absence of an express provision requiring issuance of the Notice to Proceed within a time certain, a *reasonable time* must be inferred.

² General Conditions at §1.1, p. 0800-5, defining "Notice to Proceed" as "The written notice issued by COUNTY to CONTRACTOR authorizing it to proceed with the Work and establishing the Date of Commencement of the Contract Time."

³ General Conditions at §2.2.2, p. 0800-9: "CONTRACTOR shall start to perform the Work on the Date of Commencement of the Contract Time. No Work shall be done at the site prior to the date on which the corresponding Contract Time commences to run unless otherwise authorized in writing by COUNTY."

⁴ General Conditions at §2.2.3, p. 0800-9: "Prior to the issuance of a Notice to Proceed, a preconstruction conference shall be attended by the CONTRACTOR and his subcontractors, ENGINEER and COUNTY and other entities as applicable to the Work at which time a date will be established for the issuance of the Notice to Proceed." Section 2.2.3 contains additional provisions, not relevant here, regarding physical execution and delivery of the Notice to Proceed.

Notably, at least one contract provision suggests that Notice to Proceed would follow execution of the contract without delay. For instance, General Conditions §2.2.1, p. 0800-9, states that "The Notice to Proceed may indicate a Date of Commencement of the Contract Time any time *within thirty days after the Effective Date of the Agreement.*" Emphasis added. The logical implication of that language is that the Notice to Proceed *may not* specify a Date of Commencement *more than* 30 days after the effective date of the Agreement. Thirty days after the effective date of the Agreement was, accounting for the Independence Day holiday, Tuesday July 6, 2004.

At least one other contract provision similarly suggests that County could not defer work under the contract indefinitely and at the same time hold Contractor to its original bid. Instructions to Bidders §§17.1 and 17.2 provide, respectively, that "All Bids shall remain firm for ninety (90) Days after the day of the Bid opening, but COUNTY may, in its sole discretion, release any Bid and return the Bid Security prior to that date," and "Extensions of time when Bids shall remain opened beyond the ninety day period may be made *only by mutual agreement* between Seminole County, the Low Bidder, and the Surety, if any, for the Low Bidder." Emphasis added. Again, the logical implication of the former provision is that bids do not remain firm after 90 days after bid opening. Ninety days after the bid opening is likewise Tuesday July 6, 2004. Contrary to Instructions to Bidders §17.2, no mutual agreement between County, Contractor, and the latter's surety exists which keeps Contractor's bid open past that early July 2004 date.⁵

The foregoing contract provisions strongly suggest that the County would issue the Notice to Proceed by approximately early July of 2004, and certainly before now, nearly a year after bid opening. There are no countervailing contract provisions suggesting otherwise. Nevertheless, the County has improperly failed and refused to issue the Notice to Proceed even to this date.

Note worthily, the project preconstruction conference did eventually occur, on February 24, 2005. At that preconstruction conference, and in violation of General Conditions §2.2.3, County not only failed to establish the date for issuance of the Notice to Proceed, it refused to do so. Rather, Contractor was advised by the CEI at the pretrial conference that "Notice to Proceed will be issued after resolution of [Contractor]'s request for equitable adjustment regarding cost escalation." This followed the CEI's February 4, 2005 letter claiming that "the Notice to Proceed (NTP) cannot be issued until detailed cost breakdown is received and evaluated." To this date, County has maintained that position, i.e. that the Notice to Proceed would not issue until Contractor's claim is resolved. However, that position is unsupported by the contract documents. General Conditions §2.2.3, p. 0800-9, states in pertinent part that "No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and COUNTY may otherwise agree in writing." No such written

⁵ That the parties have already entered into the Agreement does not, of itself, alter obviate the clear intent of the contract language that the contract be acted upon and the work be permitted to proceed in a reasonably timely fashion after bid opening.

agreement exists. Therefore, County's continuing refusal to issue the Notice to Proceed constitutes, at the very least, a continuing breach of the contract documents.

Both the CEI, in its March 4, 2005 "Final Decision," and the County, in its March 16, 2005 letter affirming that decision, place great stock in an ostensible agreement by Contractor at the November 22, 2004 utility coordination meeting, to the effect that Contractor agreed to defer work until late February or early March 2005.

First, to be correct, at that meeting Contractor merely expressed the desire to start work after the power company's stated estimation of when it would be done with its relocations, *viz.*, the third week of January, 2005. In reality, the power relocation work was not completed until the first week of March, 2005.⁶ At present, other overhead and underground utilities requiring relocation are still within the construction zone.

Second, even if such an agreement were reached, it would not obviate Contractor's claim, for at least one dispositive reason: in the "justification" attached to its "Final Decision," the CEI observes that Contractor "first became aware of a price escalation issue with their subcontractors and vendors in October and/or November 2004," *i.e. before* the alleged November 22, 2004 "agreement." In other words, since the subject price escalation had already occurred as of November 22, 2004, and the damage had already been done by that time, it is irrelevant whether Contractor "agreed" to a subsequent deferral of the Notice to Proceed.

Additionally, since the CEI and County invoke strict interpretations of the contract documents in denying Contractor's claim, Contractor must do likewise. Any "agreement" allegedly entered into by Contractor in that regard is ineffectual. The above-cited contract provisions provide for exceptions only upon mutual *written* agreement. Similarly, Agreement §8, p. 00500-9, provides that "The Contract Documents may only be altered, amended or repealed by a modification as provided in the General Conditions," *e.g.*, by change order. No qualifying modification or change order has been issued deferring Notice to Proceed, and Contractor certainly would not agree to one.

Additionally, any such putative "agreement" does not operate to waive Contractor's claim. General Conditions §17.7 expressly provides that "Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the...CONTRACTOR on one or more occasions shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence of any breach there under."

⁶ The issue of cost escalations was not raised or addressed during the November 22, 2004 meeting because Contractor's subcontractors or suppliers had not yet been contacted to confirm whether their pre-award quotes would still be honored, and it would have been premature to do so, since the date of issuance of the Notice to Proceed was still unknown.

In sum, the contract documents nowhere give the County the unbridled discretion to delay, defer, or postpone Notice to Proceed indefinitely, without consequence, and nowhere suggest that a year could pass before Contractor would be authorized (or the site ready—*see* following section) to begin work, and neither the CEI nor County cites to any such contractual or legal authority. Accordingly, the decision appealed should be reversed, and Contractor's claim should be granted.

B. Utility Delays, Deficiencies, and Interferences

As a practical matter, both parties are fully aware why Notice to Proceed has not been issued: the utility companies affected/implicated by the scope of the contract have been unable, in the intervening time, to accomplish the necessary utility relocations, for various reasons, none of which is the fault of Contractor.

Taking the last issue first, it is not claimed, alleged, or even suggested by the CEI or County that Contractor has been remiss at all in its contractual obligation to coordinate the subject utility relocations. On the contrary, Contractor has acted promptly and diligently in that regard.

The contract documents contemplate that utility coordination and relocation would take approximately 30 days to complete. *See* Agreement at §3.(d). For the following reasons, again, none of which is attributable to Contractor, that amount of time was woefully insufficient to accomplish the necessary relocations.

First, it cannot be denied but that the 2004 hurricanes, their number, strength, and durations, and thus their effect upon the affected utilities and the project, were unusual, if not unprecedented, unforeseeable, and without the fault of Contractor. Though the hurricanes themselves occurred over and within an approximately six-week period, and though utility service was usually restored within a matter of days after each hurricane, the utility reconstruction work necessitated by and after the hurricanes (not to mention preparatory/preventive work before each hurricane) lasted far longer, and implicated utility construction crews from across the U.S. Those hurricanes and the preparatory and reconstruction work they necessitated constituted a far longer diversion of utility company resources than the hurricanes themselves, and far longer than the County has been willing to recognize. As noted above, even as late as the November 22, 2005 utility coordination meeting, the affected utilities were still asking for more time to accomplish their relocations as a result of the effects of the 2004 hurricanes. *See* "Justification" to CEI's March 4, 2005 "Final Decision," at p. 3 thereof.

Second, in many instances, the design documents erroneously and incompletely depicted the utilities existing at the project site. For instance, many of the utility drawings show buried and overhead cables where they are not, do not show them where they are, or do not specify where they are to be relocated to (See attached colored mark-up of project layout).

Third, in many instances, the design documents either conflicted "externally" with existing construction and utilities, or "internally" with other aspects of the design (including to-be-relocated utilities). For instance, exfiltration trenches and retaining

walls (west) at the south end of the project were found to conflict with overhead utility poles (See attached colored mark-up of project layout).

The above-referenced design deficiencies and the measures undertaken by Contractor to overcome or mitigate them and their effects upon the project are fully documented by Contractor's records, which have been made available to County. The upshot of those design deficiencies, however, was that they required far more work than originally anticipated by the affected utility companies, and also required an extended in-house relocation design period for them to perform their relocation work.

That the contractually provided 30 days was insufficient to accomplish the necessary utility relocation work is evident from, among other things, correspondence between the power company (Progress Energy) and the CEI, *on the day of contract award*, clearly indicating that the revised contract drawings would require far more time (16 weeks, rather than the 30 days allocated by the contract documents) for the power company to perform its relocations. That translates into 90 additional days to relocate the power company's utilities for this project.

That the contractually provided 30 days was insufficient is further evident from the actual durations of the power company's relocation work, which is now complete. For instance, and not including the above-referenced in-house relocation design and permit approvals, the physical relocation work performed by the power company took 15 weeks to perform (November 22, 2004 through March 7, 2005). As discussed at the February 24, 2005 reconstruction conference, cable and telephone overhead utility relocation work is still on-going, and Contractor is advised that it could take another month before abandoned poles can be removed from the right-of-way.

The first schedule depicts proposed construction sequencing with the project starting March 29, 2005. It illustrates the nine utility poles requiring removal being removed the first day of the project, i.e., how Contractor would build job if all critical utility relocations were accomplished on the first day of construction. Note the contractual 30-day utility window is also illustrated as a starting activity driving the critical path of the project, as required by contract. (See attached Critical Path Schedule NTP 3/29/05)

The second schedule depicts the same construction sequencing with the project started (Notice to Proceed) on November 22, 2004, as the County alluded to considering at the second utility coordination meeting. Construction activities that Contractor would have accomplished, through yesterday, are shown in blue as complete. Note the nine utility pole removal activities are shown as starting on their true start date and indicate a remaining duration of 22 working days (i.e., one calendar month) to complete. The remaining duration is anticipated as accurate based upon recent conversations with the utility owners still attached to the said poles as of March 30, 2005. The nine utility pole removal activities are all driving the critical path of the project into negative float of 65 working days. In conclusion, this schedule demonstrates that Contractor would be 65 working days (3 calendar months) behind schedule if Notice to Proceed were issued on November 22, 2004. If the Notice to Proceed had been issued any sooner than November

22, 2004, the delay would equal 65 days plus every working day prior to November 22, 2004. Therefore a valid delay claim would be substantiated per the terms of Section 3.(d) of the contract agreement. (See attached Critical Path Schedule NTP 11/22/04)

C. Certain Escalation Permitted by Contract Documents

In its "Final Decision," the CEI maintains that no provisions of the contract documents call for compensation to Contractor on account of intervening price escalations. That is not true. The contract documents incorporate, by reference and otherwise, the Florida Department of Transportation's Standard Specifications for Road and Bridge Construction. *See, e.g.*, Technical Specifications at §01570 1.02.B; Drawing sheet 2, at General Note 1. Those specifications provide at Section 9.2 for payment of increased prices for certain materials and consumables, based upon the calculations set forth therein. Contractor's claim includes amounts attributable to price increases for the materials and consumables covered by FDOT Standard Specification section 9.2, and neither the CEI nor County have found otherwise.

III. Conclusion

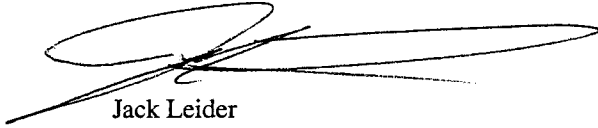
The Seminole "County Manager's Internal Policy And Procedure Guide To Purchasing (Rev: 12/04/03)" ("Purchasing Policies") state, at §1-3.5., that the specific responsibilities, duties, and functions of the Seminole County Purchasing and Contracts Division include "[p]romoting good will between Seminole County and its suppliers," "[e]ncouraging full and open competition whenever possible," and "[a]ssuring fair and equitable business dealings with all vendors." At §1-4.3.(d), the Purchasing Policies inveigh against "the use of unfair specifications, which preclude or reduce competition." At §10-1(a) provides that "The Bidding Documents are intended to assure Bidders fair and equitable treatment." These objectives are consistent with the recognized obligation of good faith and fair dealing imposed upon all contracting parties in Florida. Contractor respectfully submits that County's treatment and rejection of Contractor's claim under the foregoing circumstances, which were unforeseeable and as to which Contractor is completely without fault, is contrary to the above-cited contract provisions, is contrary to the stated aspirations of the Purchasing Policies, is without contractual justification, is unconscionable, and should be reversed.

Contractor's February 28, 2005, price escalation summary, in the of \$97,903.00, covers certain subcontractors and vendor price, some of whose price quotes have again expired. Contractor therefore must reserve the right to hereafter adjust its claim to account for the expiration of those quotes.

Contractor requests that its claim be honored and approved at current new quotes valid for the next 90 days or, in the alternative, that Contractor be released from the subject contract without consequence.

If you have any comments or questions regarding the foregoing, please do not hesitate to contact us.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jack Leider', with a long horizontal flourish extending to the right.

Jack Leider
Project Manager

Cc: Roy Smith, Jr., PCG
Thomas Perley, PCG
Kevin Grace, County Manager
Ann Colby, Assistance County Attorney
Steve Krug, Principal Engineer
Pete Maley, Contracts Supervisor
Bryan Capps, Esquire
Trent Carmichael, HNTB
John M. Watson, HNTB



DEPARTMENT OF FISCAL SERVICES
PURCHASING AND CONTRACTS DIVISION
1101 EAST FIRST STREET • ROOM 3208
SANFORD, FL 32771-1468
TEL: (407) 665-7116 • FAX: (407) 665-7956

FAX: 407-856-8182

March 16, 2005

Mr. Jack Leider
Prime Construction Group, Inc.
P.O. Box 590507
Orlando, FL 32859-0507

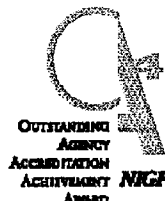
Subject: Your claim request dated March 11, 2005 concerning CC-1229-04/TLR;
Markham Woods Road Widening Project.

Dear Mr. Leider:

This letter is in response to your subject contract claim to increase the contract price by \$97,903.00 because of material price escalations. In accordance to Section 330.71 (Contract Claims) of the Seminole County Government Administrative Code, the Purchasing and Contracts Manager has rendered the following determination concerning your claim.

I find the following facts that are pertinent to my decision:

- This is a firm fixed price contract that was executed on June 4, 2004.
- The Notice to Proceed has not been issued. The delay in such issuance was requested by Prime Construction Group's, Inc. (PCG).
- The County did not hinder nor cause any issues that would delay this project.
- PCG has submitted a claim to cover the cost of material increases that has occurred because of this delay.
- Section 4 (b) under Contract Price of the contract, PCG agreed to accept the contract price for all the work under the contract and for all risks of every description connected with this project.



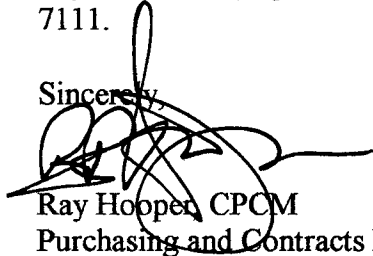
- The contract documents place the burden, responsibility and coordination of all utility matters on PCG.
- Hurricanes of 2004 ended in September, but it was in November 2004 at a utility staff meeting that PCG expressed a desire to delay the start of this project and agreed to an anticipated start date of February 2005. At no time during this meeting did the County agree to any price increase or to any changes in the contract terms and conditions.

Based upon the above, I find that your claim is a result of PCG's request to delay the start of this project. Therefore, it is my decision to reject your claim. You may appeal this decision in accordance with Section 330.71 of the Seminole County Code.

Further, I find that if PCG cannot perform under the contract terms, the County intends to seek relief for any performance relative issue, including delay damages by PCG from the Surety, Traveler Casualty (Bond # 103409742).

If you have any questions concerning this letter, please contact my office at 407-665-7111.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ray Hooper', is written over the word 'Sincerely,' and extends across the name and title of the sender.

Ray Hooper, CPCM
Purchasing and Contracts Manager

Attachment: Copy of the Seminole County Code, Section 330.71

cc: Travelers Casualty & Surety Company of America
Mr. Kevin Grace, County Manager
Ms. Ann Colby, Assistance County Attorney
Jim Pullen, Principal Engineer
Pete Maley, Contracts Supervisor

record that the award of a contract, without delay, is necessary to protect substantial interests of the County.

(g) Authority to Resolve: The Purchasing and Contracts Manager shall attempt to resolve the protest in a fair and equitable manner, and shall render a written decision to the protesting party within thirty (30) business days from the date of receipt of the protest.

(h) Appeal Process: The Purchasing and Contracts Manager's decision shall be final and conclusive unless within five (5) business days of receipt of the written decision, the protesting party delivers a written notice of appeal to the Purchasing and Contracts Manager with an Appeal Bond. An advisory appeal committee, comprised of the Purchasing and Contracts Manager or designee and the user Department Director or Division Manager, shall have the authority to review the appeal and make recommendations to the County Manager. The Appeal Committee shall conduct a hearing where the aggrieved person shall be given the opportunity to show why the decision of the Purchasing and Contracts Manager should be modified. The Appeal Committee shall render a written recommendation within thirty (30) business days from the date of the written notice of appeal. The formal rules of civil procedure and evidence will not be applied. The Appeal Committee shall render a final written recommendation to the County Manager. The County Manager shall render his or her final written decision within five (5) business days from the date of the recommendation. If no decision is rendered within this time frame then it will be presumed that the County Manager concurs in the Appeal Committee's decision and the decision of the Appeal Committee shall be the final and conclusive administrative action.

(i) Appeal Bond: Any person who files an action appealing a decision shall post with the Purchasing and Contracts Manager at the time of filing the formal written appeal a bond payable to the County in an amount equal to five percent (5%) of the County's estimate of the total contract value or *FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)*, whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against appellee in the administrative hearing in which the action is brought and in any subsequent appellate court or court proceeding. In lieu of a bond, the County may accept a cashier's or certified check, or money order in the above referenced amount. If, after completion of the administrative hearing process and any court or appellate court proceedings, the County prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person appealing the decision, the bond, cashier's check, or money order shall be returned to him. If the person appealing the decision prevails, he shall recover from the County all costs and charges which shall be included in the final order of judgment, excluding attorney's fees.

(j) Reservation of Powers to Settle Actions Pending before the Courts: Nothing in this Section is intended to affect the existing powers of the Board to settle actions pending before the Courts.

Sec. 330.71 Contract claims.

(a) Decision of the Purchasing and Contracts Manager: All claims by a contractor against the County relating to a contract shall be submitted in writing to the Purchasing and Contracts Manager for a decision. Claims include, without limitation, controversies arising under a contract, and those

based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(b) Notice to the Contractor of the Purchasing and Contract Manager's Decision: The decision of the Purchasing and Contracts Manager shall be issued in writing, and shall be mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.

(c) Finality of Purchasing and Contracts Manager's Decision; Contractor's Right to Appeal: The Purchasing and Contracts Manager's decision shall be final and conclusive unless, within five (5) business days from the date of receipt of the decision, the contractor delivers a written appeal to the Division of Purchasing with an appeal bond.

(d) Render Timely Decision: The Purchasing and Contracts Manager with concurrence of the County Attorney shall issue a written decision regarding any contract controversy within sixty (60) business days after written request for a final decision, or within such longer period as may be agreed upon between the parties.

(e) Appeal Process: Any person aggrieved by the decision of the Purchasing and Contracts Manager must deliver a written appeal within five (5) business days of receipt of the written decision to the Purchasing and Contracts Manager with an appeal bond. An advisory appeal committee, comprised of the Purchasing and Contracts Manager or designee and the user Department Director or Division Manager, shall have the authority to review the protest and render a written recommendation to the County Manager. The Appeal Committee shall conduct a hearing where the aggrieved person shall be given the opportunity to show why the decision of the Purchasing and Contracts Manager should be modified. The Appeal Committee shall render a written recommendation within sixty (60) business days from the date of the written notice of appeal and the County Manager shall render a final decision within five (5) business days from the date of the recommendation. If no decision is rendered within this time frame then it will be presumed that the County Manager concurs in the Appeal Committee's decision and the decision of the Appeal Committee shall be the final and conclusive administrative action.

Sec 330.72 Right to protest award of certain contracts awarded by the Board.

This Section is applicable solely to protests filed by a recommended vendor after the award of a contract by the Board of County Commissioners was to other than that recommended vendor.

Upon receipt of the written notice of protest, the Purchasing and Contracts Manager shall schedule a hearing before the Board of County Commissioners. The aggrieved person shall be given an opportunity to show why the award of contract by the Board of County Commissioners should be modified.

The decision of the Board of County Commissioners shall be the final and conclusive administrative action.

Sec. 330.73 - 330.79 Reserved.

SEMINOLE COUNTY CONTRACT CLAIM

Contract Claim Number 01
Agreement Title Markham Woods Road Widening
County Contract Number CC-1229-04 / TLR
Contractor Prime Construction Group, Inc.
Agreement Date June 4, 2004
Change Request upon which this contract claim is based N/A

Contract Claim submittal date: March 11, 2005

Date of occurrence of event giving rise to this Contract Claim March 4, 2005

Note: Contract Claims and supporting data must be submitted within the applicable contract claims and supporting data limitations periods set forth in the Contract Documents. Notice of Contract Claims must be made by written notice to the COUNTY's Purchasing Manager.

I. Relief Requested:

A. Amendments to Contract Documents:

None other than as noted under 1.C.

B. Contract Time: N/A

C. Contract Price: \$97,903.00

II. Describe occurrence giving rise to this Contract Claim:

~~CEI's denial of contractor requested contract price adjustment for contract material price escalations throughout a prolonged period between award and anticipated NTP.~~

III. Describe change request negotiations if this Contract Claim is based on a change Request that was not converted to a Change Order:

N/A

IV. State the basis of this Contract Claim if based upon a unilateral Change Order or Field Order:

N/A

(Note: General citations or discussion of the Contract Documents is not adequate)

V. Describe the justification for this Contract Claim:

- A. Cite the applicable Contract Document Sections providing the Contract Claim and supporting data limitation (time periods for filing) periods:

Seminole County Division I of the Standard Specifications Section 11

B. Cite the applicable Contract Document Sections upon which the Contract Claim is based:
Seminole County Division I of the Standard Specifications, as well as any
FDOT Standard Specifications for Road and Bridge Construction, incorporated
by reference

- C. Discuss the justification for this Contract Claim including an application of the facts to the applicable Contract Documents Sections:

See attached.

VI. Acknowledgements:

This Contract Claim is submitted by:

Contractor: Prime Construction Group, Inc.

By: Jack Leider

Title: Project Manager

Date: March 11, 2005

Receipt of this Contract Claim acknowledge by:

Purchasing Manager: _____

Date: _____

Note:

1. *Contract Claims are addressed under the procedures set forth in Chapter 220, Seminole County Code or successor provisions and the terms and conditions of these Contracts Documents.*
2. *The Florida False Claims Act provides civil penalties not more than \$10,000 plus remedies for obtaining treble damages against contractors or persons causing or assisting in causing Florida governments to pay claims that are false when money or property is obtained from a Florida government by reason of a false claim.*
3. *The amounts included cover all direct, supplemental, indirect, consequential, and cumulative costs and delays, as applicable, and that those costs and delays would be or were necessarily incurred, despite CONTRACTOR'S reasonable, prudent and diligent efforts to mitigate them.*

CONTRACT CLAIM
6/19/96

App. I-1
Page 2 of 2

Contract Claim

Page 3

Prime Construction Group, Inc.

Markham Woods Road Widening

Contract No. CC-1229-04 / TLR

Section V.C.

Discuss the justification for this Contract Claim including an application of the facts to the applicable Contract Documents Sections:

Several Acts of God (Hurricanes) occurring in 2004, between contract award and anticipated NTP, caused significant delays to third party owned, utility relocation efforts, subsequently delaying contractors' ability to start the project and hold subcontractor and vendor "bid award" prices valid. These prices are typically valid for 30 to 90 days.

PRIME CONSTRUCTION GROUP, INC.

CGC037504 CUC056650 QB33325

1000 Jetstream Drive, Orlando, FL 32824
P.O. Box 590507, Orlando, FL 32859-0507 (Mailing Address)

407-856-8180 PH
407-856-8182 FX

February 28, 2005

Trent Carmichael, P.E.
HNTB
5575 S. Semoran Blvd.
Suite 38
Orlando, Florida 32822

PS-5149-03

Re: Price Escalation
Markham Woods Rd. Widening To 3 Lanes (Springs Landing Blvd. to EE Williamson Rd.)
CC-1229-04/TLR

Dear Trent:

As per your request, attached to this letter you will find a revised price escalation summary with the escalation breakdown shown in bid items.

If you have any questions, please contact me at (407) 856-8180 ext. 227. Thank you for your attention to this matter.

Respectfully,



Jack Leider
Project Manager
Prime Construction Group, Inc.

CC: John Watson, HNTB Project Administrator

BID FORM

Markham Woods Road

Pay Item No.	Units	Quantity	Item Description	Unit Cost	Total	Escalated Unit Price	Escalated Difference
101-1	LS	1	Roadway Mobilization	40000.00	\$40,000.00	41355.00	\$1,355.00
104-4	AC	4	Mowing	150.00	\$600.00		
104-10	EA	284	Baled Hay or Straw	8.00	\$2,272.00		
104-13	LF	6910	Staked Silt Fence (Type III)	1.50	\$10,365.00		
110-1-1	LS	1	Clearing and Grubbing	35000.00	\$35,000.00	35661.00	\$661.00
120-1	CY	1596	Regular Excavation	10.00	\$15,960.00	10.45	\$718.20
120-6	CY	2363	Embankment	11.00	\$25,993.00	11.80	\$1,417.80
180-4	SY	5484	Stabilized Subbase Type B (12")	7.50	\$41,130.00	7.96	\$2,522.64
285-707-247	SY	4047	Optional base (Base Group 7)	20.00	\$80,940.00	21.97	\$7,972.59
285-711	SY	763	Optional Base (Base Group 11)	31.00	\$23,853.00	34.05	\$2,327.15
300-1-3	GA	3274	Bituminous Material (Tack Coat)	1.25	\$4,092.50	1.37	\$392.88
327-70-1	SY	8646	Milling Existing Asphalt Pavement (1" Ave Depth)	2.00	\$17,292.00	2.20	\$1,729.20
327-70-5	SY	8813	Milling Existing Asphalt Pavement (2")	3.00	\$20,439.00	3.30	\$2,043.90
331-2	TN	2085	Type S Asphaltic Concrete (Leveling & Overbuild)	68.00	\$141,780.00	74.69	\$13,948.65
331-72-20	SY	20289	Type S Asphaltic Concrete (2")	6.00	\$121,814.00	6.59	\$11,958.71
337-5-3	TN	1013	Asphalt Conc. Friction Course (Inc. Bit/Bubber)(1"-FC-3)	77.00	\$78,001.00	84.57	\$7,668.41
400-1-2	CY	11	Class I Concrete (End Walls)	1100.00	\$12,100.00	1190.36	\$993.96
400-1-11	CY	355	Class I Concrete (Retaining/Gravity Walls)	500.00	\$177,500.00	527.70	\$9,833.50
400-1-15	CY	5	Class I Concrete(Miscellaneous)	350.00	\$1,750.00	360.40	\$52.00
425-1-311	EA	10	Inlet (Curb Type P-1) (<10')	2300.00	\$23,000.00	2461.70	\$1,617.00
425-1-321	EA	1	Inlet (Curb Type P-2) (<10')	2600.00	\$2,600.00	2777.00	\$177.00
425-1-351	EA	1	Inlet (Curb Type P-5) (<10')	2700.00	\$2,700.00	2864.00	\$164.00
425-1-451	EA	7	Inlet (Curb Type J-1) (<10')	6000.00	\$42,000.00	8375.43	\$2,628.01
425-1-461	EA	1	Inlet (Curb Type J-2) (<10')	6200.00	\$6,200.00	8586.00	\$386.00
425-2-91	EA	2	Manhole (Type J-8) (<10')	5900.00	\$11,800.00	8271.50	\$743.00
425-2-92	EA	1	Manhole (Type J-8) (>10')	6500.00	\$6,500.00	8738.13	\$238.13
426-733-221	LF	2495	Slotted Drain Pipe (12Gauge) (Optional Material) (12")	22.00	\$54,890.00	23.83	\$4,565.85
426-733-225	LF	1416	Slotted Drain Pipe (12 Gauge) (Optional Material) (18")	28.00	\$39,648.00	30.32	\$3,285.12
426-733-229	LF	978	Slotted Drain Pipe (12 Gauge) (Optional Material)(24")	40.00	\$39,120.00	43.10	\$3,031.80
426-733-233	LF	884	Slotted Drain Pipe (12 Gauge) (Optional Material) (30")	65.00	\$44,460.00	69.71	\$3,221.64
430-11-325	LF	523	Concrete Pipe Culvert (Storm Sewer) (Round) (18")	42.00	\$21,966.00	43.85	\$967.55
430-11-329	LF	492	Concrete Pipe Culvert (Storm Sewer) (Round) (24")	50.00	\$24,600.00	51.95	\$959.40
430-11-333	LF	625	Concrete Pipe Culvert (Storm Sewer) (Round) (30")	66.00	\$41,250.00	68.84	\$1,650.00
443-71-1	CY	1577	Ballast Rock (French Drain Aggregate)	38.00	\$56,772.00	39.83	\$6,039.91
514-71-1	SY	7075	Plastic Filter Fabric (Subsurface Exfiltration Trench/Pipe)	3.00	\$21,225.00		
515-1-2	LF	1520	Handrail Pipe	37.00	\$56,240.00		
520-1-10	LF	7178	Concrete Curb & Gutter (Type F)	16.00	\$114,848.00		
520-3	LF	170	Concrete Valley Gutter	25.00	\$4,250.00		
522-1	SY	909	Concrete Sidewalk (4")	25.00	\$22,725.00		
522-2	SY	1337	Concrete Sidewalk (6")	35.00	\$46,795.00		
524-1-2	SY	31	Concrete Ditch Pavement (Non-Reinforced) (4")	25.00	\$775.00		
575-1	SY	11100	Sodding (Bahia)	1.60	\$17,760.00		
666-3	LS	1	R-O-W Survey	20000.00	\$20,000.00	22380.00	\$2,380.00
999-01	LS	1	Maintenance of Traffic	40000.00	\$40,000.00	40253.00	\$253.00
700-40-1	AS	9	Sign (Single Post) (Less than 12)	165.00	\$1,485.00		
700-46-11	AS	9	Sign Existing, Single Post (Remove)	58.00	\$522.00		
706-3	EA	580	Reflective Pavement Marker	3.75	\$2,175.00		
710-11	SF	20	Pavement Markings Removal (Paint)	1.20	\$24.00		
711-4	EA	38	Directional Arrows, Thermoplastic	41.00	\$1,558.00		
711-32	LF	3726	Skip Traffic Stripe (Thermo) (6" yellow 10'-30' Skip)	0.20	\$745.20		
711-35-81	LF	287	Traffic Stripe Skip Thermoplastic (White) (8")	1.00	\$287.00		
711-35-121	LF	151	Traffic Stripe Skip Thermoplastic (White) (12")	1.20	\$181.20		
711-35-181	LF	44	Traffic Stripe Skip Thermoplastic (White) (18")	2.05	\$90.20		
711-35-241	LF	88	Traffic Stripe Skip Thermoplastic (White) (24")	2.50	\$220.00		

BID FORM

Markham Woods Road

711-36-181	LF	821	Traffic Stripe Skip Thermoplastic (Yellow) (18")	2.00	\$1,642.00		
711-37-61	NM	1.768	Traffic Stripe Solid Thermoplastic (White) (6")	1850.00	\$3,270.80		
711-38-61	NM	2.026	Traffic Stripe Solid Thermoplastic (Yellow) (6")	1850.00	\$3,748.10		
660-2-106	AS	3	Loop Assembly (F & I) (Type F)	1600.00	\$4,800.00		
			Total Cost		\$1,633,334.00		\$97,903.00